RECENT CASE NOTES

CORPORATIONS — MUNICIPAL CORPORATIONS — ESTOPPEL — NUISANCE—RAILROAD CROSSING.—A railroad built stub tracks on its private "right of way" through a city in 1910, the railway crossing several streets at grade. By law the privilege to cross the streets must be secured from the common council of the city, but this was not secured. Congestion of freight made necessary additional yards and side-tracks, the construction of which was commenced in May, 1916, also without securing the privilege to cross the intersecting streets. On July 31, the council granted this privilege and the company increased its operations and expended $5,000 during the next week. On August 7, the council rescinded its vote, and sought an injunction to restrain the building of the new tracks and to force the removal of those laid. *Held,* that the injunction should not be granted because the city was estopped to ask removal of tracks already laid, and because "equity" and the solution of the freight problem demanded the completion of those proposed. *City of Flint v. Grand Trunk Ry.* (1919, Mich.) 174 N. W. 147.

When a city acquiesces in the exercise of an apparent privilege to build and maintain tracks on a street and operate on them for some time, with considerable outlay and expense, it may be estopped to deny the railroad's privilege. See 3 Dillon, *Municipal Corporations* (5th ed. 1911) sec. 1242. If the city has no power to grant such a privilege, it is perhaps a different matter. *Cf. Ashland v. Chicago & N. W. Ry.* (1900) 105 Wis. 398, 80 N. W. 1101. A few cases seem to deny the possibility of estoppel, but there was no great reliance on the conduct of the city. *Morris & Essex R. R. v. Newark* (1855) 10 N. J. Eq. 352; *Sacramento v. Pacific Gas & Electric Co.* (1916) 173 Calif. 787, 161 Pac. 978. In one the order to tear up the tracks had been issued only to force the traction company to accept a "franchise" it did not like. *Bangor v. Bay City Traction Co.* (1907) 147 Mich. 165, 110 N. W. 490. The instant case is an application of the usual rule, therefore, but it presents an additional fact in that the trial court found the crossings to be a public nuisance and dangerous to life. The decision of the upper court that the city had no right to deny the privilege disposes of this so far as the obstruction of the streets and the ordinary unpleasantness is concerned, for consent ends that as a nuisance. *Spokane Street Ry. v. Spokane Falls* (1893) 6 Wash. 521, 33 Pac. 1072. But the court failed to discuss the possibility that the danger to life might still remain a nuisance, and the tone of the opinion indicates that it is not so considered in spite of the finding of the court below. The case is best supported on the theory that physical property capable of lawful uses cannot be demolished because used unlawfully, but that the procedure is to restrain the unlawful use. See 2 Dillon, *op. cit.,* 688; *cf. Chicago v. Union Stock Yards & Transit Co.* (1896) 164 Ill. 224, 45 N. E. 430 (carrying cattle through city); *cf. St. Louis R. R. v. Kirkwood* (1900) 159 Mo. 239, 60 S. W. 110. In the instant case the danger to life can be obviated best, not by injunction, but by ordinances requiring safety devices, the company doubtless being under a liability of having such duties imposed upon it.

EVIDENCE—POST-TESTAMENTARY DECLARATIONS.—Application for the probate of a will was contested on grounds of forgery. Declarations of the testator that he had made a will for the benefit of the proponent were admitted to prove that the propounded will was genuine. *Held,* that the admission was proper. *In re Johnson's Estate* (1920, Wis.) 175 N. W. 917.